No. 95-1475

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1995

WINSTON & STRAWN,

Petitioner,

vs.

HYATT REGENCY PHOENIX HOTEL COMPANY, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the Court of Appeals of Arizona

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether, under the circumstances, a verdict of three million dollars in punitive damages awarded against a law partnership (in favor of a client) by a properly instructed jury (which awarded over $1.2 million in compensatory damages to which the trial court added over $650,000 in pre-judgment interest) required the Arizona trial court or the Arizona Court of Appeals to order a remittitur or new trial under the Due Process Clause of the Fourteenth Amendment because only the conduct of the partner who managed the client's representation was put in issue (by either Plaintiffs or Defendant) at trial.

STATEMENT PURSUANT TO RULE 29.6

Respondent Nametco Corporation is the parent company of respondent National Metals Company. Southwest Alloys Corp. is a partially owned subsidiary of National Metals Company. All other subsidiaries are wholly owned.

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Respondents ("HRP") respectfully oppose Winston & Strawn's Petition for a Writ of Certiorari to review the judgment of the Court of Appeals of Arizona in this case, requesting that its Petition be denied.

STATEMENT

Cursory comparison of Winston & Strawn's Statement with the opinion of the Arizona Court of Appeals (which HRP hereby adopts as part of its Statement) suggests that they are addressing different cases. They are not. Winston & Strawn is simply presenting the same one-sided story that was rejected by the jury, the trial court, the Arizona Court of Appeals and, by denying review, the Arizona Supreme Court. Moreover, Winston & Strawn does not argue in its Petition or state as an issue presented for review that the jury-found facts as recited by the Arizona Court of Appeals lack substantial support in the record. Winston & Strawn merely cites selectively to evidence favorable only to it — and speculates. When presented with this same "appellate technique," the Arizona Court of Appeals gave it short shrift: "Winston & Strawn's argument overlooks several important facts which the jury did not overlook." *Hyatt Regency Phoenix Hotel Co. et al. v. Winston & Strawn*, __ Ariz. __, 907 P.2d 506, 518 (App. 1995) (*rev. den.* 1995); Appendix to Winston & Strawn's Petition at 21a. (The Court of Appeals opinion will hereafter be cited as "907 P.2d, at __; App. at __".) This Court is equally strict. *Missouri, K. & T. Ry. Co. v. Haber*, 169 U.S. 613, 639, 18 S. Ct. 488, 42 L. Ed. 878 (1898) ("Much was said at bar about the finding of the jury being against the evidence. We cannot enter upon such an inquiry. The facts must be taken as found by the jury . . ." (citation omitted)); *Basham v. Pennsylvania Co.*, 372 U.S. 699, 700-01, 88 S. Ct., 10 L. Ed. 2d 80 (1963) ("Only when there is a *complete absence of probative facts* to support the conclusion reached [by the jury] does a reversible error appear") (quoting earlier case; bracketed insert

(a) The incorrect actual assumption is that Winston & Strawn could not possibly have undone the damage to HRP caused by pre-merger conduct. However, the Arizona Court of Appeals held that the jury had "substantial evidence" from which to find otherwise. *See supra* at (1). Winston & Strawn's assumption must be rejected. *Haber, supra*; *Basham, supra.*

(b) Winston & Strawn also incorrectly assumes that when two partnerships merge to form a new partnership, the proper "ratio" to consider involves only post-merger compensatory damages. Not only is this patently wrong in light of Arizona partnership law (which holds the post-merger partnership liable for the debts of both partnerships), but Winston & Strawn nowhere in its Petition suggests that this contention was raised as part of a federal question. *See* Rule 14.1(g)(i). In any event, even were such the rule, it is inapplicable to these facts where the jury "could reasonably have concluded" that the post-merger malpractice resulted in very substantial damages. *See supra* at (1).

4. As even Winston & Strawn's Statement of the case shows, this action does not present a situation where a jury was invited to base the amount of its punitive damages award upon a *multiplication* of the damages allegedly caused by a defendant's similar conduct towards persons *other* than the plaintiff. This is not a "repetitive conduct" case.

In short, contrary to Winston & Strawn, this case is by no means similar to BMW of North America, Inc. v. Gore, No. 94-896 — where BMW is represented by Winston & Strawn's counsel of record here. Neither "repetitive conduct" nor a large punitive

to compensatory damages ratio is involved here. The ratio is 2 or 3:1 (depending in part on treatment of pre- and post-judgment interest[2]*). Cf. 907 P.2d, at 521; App. at 27a, where the Arizona Court of Appeals states the punitive award is "less than three times HRP's compensatory damages."*

(5) Winston & Strawn states that this a "pure derivative liability" case, as though this were an "innocent employer"/ menial employee situation. This is false. The Court of Appeals affirmed the punitive damages judgment based not only upon Arizona's *respondeat superior* theory (similar to the theory which this Court held passed due process muster in *Pacific Mutual Life Insurance Co. v. Haslip*, 499 U.S. 1 (1991)), but also upon three separate additional bases:

> (a) Arizona Revised Statutes ("A.R.S.") § 29-213, which explicitly imposes liability on partnerships for "any penalty." 907 P.2d, at 514; App. at 11a-13a.
>
> (b) Under general partnership law, according to which, the Arizona Court of Appeals, quoting from the *Restatement (Second) of Agency*, ch. 7, scope note at 454, explained: "[for the purposes of imposing punitive damages], the conduct of any member of a partnership . . . can be treated as the conduct of a principal." 907 P.2d, at 514 n. 6; App. at 12a n. 6.

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2. Defendants typically focus on verdict amounts and ignore judge-awarded pre-judgment interest and statutory post-judgment interest. While that focus may make sense in a "passion and prejudice" analysis, it does not seem to make sense in the different "due process" analysis (at least with respect to pre-judgment interest). However, this issue is palpably of no importance here, and HRP will just use "2 or 3:1 ratio."

(c) And "even if Arizona followed the *Restatement [(Second) of Torts* § 909] view, Winston & Strawn could still be liable in punitive damages because it employed Greenfield in a managerial capacity and he managed HRP's case." 907 P.2d, at 516 n. 11; App. at 17a n. 11.

(6) Moreover, as the Arizona Court of Appeals explained, 907 P.2d, at 515; App. at 14a:

> In its opening statement, Winston & Strawn proclaimed:
>
> > And I'll make the deal with you right now if you think he [Greenfield] lacks integrity and tried to prefer one client over the other and did so and hurt HRP and Shapiro, find against him. Find against Winston & Strawn.
>
> The position taken by Winston & Strawn at trial and the position taken by it on appeal and apparently accepted by the dissent are irreconcilable. . . .

(7) Winston & Strawn repeatedly suggests that Greenfield's conduct did not warrant punitive damages. As the Arizona Court of Appeals noted, "even the dissent agrees that Greenfield's conduct was reprehensible and that the harm to HRP was severe." 907 P.2d, at 517; App. at 17a. Indeed, although Winston & Strawn emphasizes that "the record contains no evidence that Greenfield was even charged with a disciplinary violation by the Arizona Bar," (Petition at 19),[3]

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3. But the absence of evidence of confidential Bar disciplinary (Cont'd)

Winston & Strawn does not mention the closing sentence of the Court of Appeals' opinion (to which the dissenting Judge did not object): "Finally, we direct the Clerk of this Court to send a copy of this opinion to the State Bar of Arizona Disciplinary Commission for its review." 907 P.2d, at 527; App. at 40a. The majority plainly agreed that an "evil mind" had been proven by "clear and convincing evidence." 907 P.2d, at 518-19; App. at 20a-23a.

(8) Winston & Strawn focuses heavily, but irrelevantly, on allegedly inflammatory language used by HRP's trial counsel during *closing* argument. Winston & Strawn fails to note, first, that even the dissenting Judge in the Court of Appeals acknowledged that any such complaint had been waived — Winston & Strawn made no objection. 907 P.2d, at 530; App. at 47a. Second, as the majority opinion pointedly noted, trial counsel's comments were in direct reaction to *earlier* (similar) "rich people" remarks made by Winston & Strawn's trial counsel about HRP (singling out HRP partner Sam Shapiro) "throughout the trial," *including* during *opening* statement. 907 P.2d, at 521 n. 15; App. at 27a-28a n. 15.

(9) Throughout, Winston & Strawn argues that the jury and the Arizona judges focused merely upon its wealth in order to determine and justify the amount of the punitive damage award. This is simply contrary to the evidence analysis of the Arizona Court of Appeals which focused, in addition and *inter alia*, on the purposes of punitive damage awards, the potential for harm to HRP by Winston & Strawn's conduct (the shifting of the entire $3.6 million potential liability to it), Winston & Strawn's concealment of its conduct from HRP, and the fact that the conduct favored a much richer and more important client. 907

(Cont'd)
proceedings does not give rise to an inference that such confidential proceedings have not been brought.

P.2d, at 521-22, 518-19; App. at 27a, 21a-23a. All that evidence was before the jury and trial judge.

SUMMARY OF ARGUMENT

HRP details the following reasons in the next section (in the following order) for denying Winston & Strawn's Petition for Certiorari (for convenience, the numbering here is followed in that section as well):

(1) Winston & Strawn asserts that this is a "*BMW*" case. It is not. All the punitive damages issues in *BMW* arise because the trial was "infected" with evidence and argument about *non*-parties who were subjected to similar conduct by BMW. No such evidence or argument is involved in this case. Moreover, contrary to Winston & Strawn, this case involves a 2 or 3:1 ratio (of punitive to compensatory damages).

(2) The Rules of the United States Supreme Court, Rule 14.1(g)(i), require a detailed affirmative showing that this Court has jurisdiction over the question presented because that question was in fact adequately presented to the state courts and ruled upon by them. Winston & Strawn disregards this Rule, making no attempt at compliance. The opinion of the Arizona Court of Appeals, and the trial court's post-judgment decision do *not* reflect that the question Winston & Strawn presents for review here "was pressed and passed upon below." Winston & Strawn's lack of candor in failing to admit that it needed to make a "mere enlargement" argument — and obviously its failure to make the required argument — calls for denial of its Petition. Even if Winston & Strawn were permitted to make a belated "mere enlargement" argument, both comity and prudence nonetheless counsel against granting certiorari because the Arizona courts have not considered the issue and the record below plainly was not developed in light of this new contention.

(3) Winston & Strawn's Petition egregiously misstates the facts as recounted and approved by the Arizona Court of Appeals' opinion without any attempt to show that the Court of Appeals' opinion inaccurately states the facts as found by the jury on "substantial evidence."

(4) Winston & Strawn's Petition describes this as a case of "pure derivative liability" implying an "innocent employer"/ menial employee situation. This ignores the Court of Appeals three alternative holdings (based on varying different and higher standards) justifying imposition of punitive damages liability in the verdict amount, and as further approved by the trial court and Court of Appeals.

(5) In the end, Winston & Strawn is just claiming that the Arizona Courts misapplied correctly stated rules of law. Certiorari is "rarely granted" in such cases. Rules of the United States Supreme Court, Rule 10.

(6) Given the foregoing, the only actual question presented is whether a 2 or 3:1 ratio of punitive to compensatory damages, awarded by a properly instructed jury, approved by a state trial court and court of appeals applying correctly stated rules of law, *ipso facto* violates due process. This Court's past precedent is directly to the contrary, and Winston & Strawn provides no reason for revisiting that precedent.

REASONS FOR DENYING THE PETITION

I.

THE ISSUES RAISED BY THE *BMW* CASE ARE NOT PRESENT IN THIS CASE DESPITE PETITIONER'S CLAIM TO THE CONTRARY.

Winston & Strawn alleges that *BMW of North America, Inc. v. Gore*, No. 94-896, which is pending before this Court, raises "a virtually identical issue" to that raised here. Petition at 17. This is simply not so for two reasons.

First, HRP's review of the briefs and oral argument before this Court in *BMW* make it clear that the punitive damage issues in *BMW* arise from the admission of evidence, and jury argument, regarding conduct of BMW which, while similar to the conduct complained of, concerned *other* individuals, not the plaintiff, and which occurred in some cases in jurisdictions where BMW's conduct was clearly lawful. But the case at bar does not involve such "repetitive conduct" in the first place.

Second, Winston & Strawn presents a convoluted quasi-mathematical argument resulting in the erroneous conclusion that the ratio of punitive damages to compensatory damages here is approximately 450:1, since the quasi-mathematics supposedly yield damages to HRP of only some $6,000 during the post-merger period. Petition at 21-22. This argument was never presented to any court below. Moreover, the very premise of Winston & Strawn's argument conflicts with the plain statement of the Arizona Court of Appeals that there *was* "substantial evidence" (obviously ignored by Winston & Strawn here) from which "the jury could reasonably have concluded" that "HRP could have significantly reduced its liability in the [underlying] litigation" during Winston & Strawn's

representation of HRP because during six months of that period (before the Special Master issued his final report) "the parties still had an opportunity to change the outcome of the case." 907 P.2d, at 517; App. at 18a-19a. In contrast, then, the false factual predicate of Winston & Strawn's argument is that there was no post-merger opportunity to change the outcome of the underlying litigation. Winston & Strawn should not, and cannot, ask this Court to disregard facts found by the jury on substantial evidence. *Haber, supra*; *Basham, supra*. Winston & Strawn's argument is in any event belied by its payment of $1.7 million in compensatory damages.

In short, this is a 2 or 3:1 ratio case — a ratio which BMW itself conceded (with a minor *caveat*) to be unchallengeable on due process grounds. *See* BMW's Opening Brief at p. 33 n. 20 (1995 WL 126508).

In any event, BMW's "ratio" argument also largely (if not entirely) depends upon the "*repetitive*" or multiplicative aspect of that case. [*See* Brief for Petitioner at p. 45; Reply Brief at 15 (1995 WL 126508)].

The case at bar is a 2 or 3:1 ratio case with the compensatory damages being those suffered by HRP, *not* some collection of non-parties; there is no huge ratio resulting from a multiplication of alleged damages to non-parties.

No envisageable ruling by this Court in *BMW* can affect the resolution of *this* case. That Winston & Strawn's counsel of record (*who is also BMW's counsel of record*) should argue otherwise to this Court alone supports denial of Winston & Strawn's Petition. Rule 14.4 ("the failure of a petitioner to present [its case] with accuracy . . . is sufficient reason for the Court to deny a petition").

II.

WINSTON & STRAWN MADE NO ATTEMPT TO COMPLY WITH RULE 14.1(g)(i).

The federal question Winston & Strawn presents is:

> Whether a $3 million punitive exaction in a case of pure vicarious liability is so excessive as to violate the Due Process clause of the Fourteenth Amendment. Petition at (i).

The question is very broad, but at least signals some sort of *due process* argument based on an *interplay* between punitive damages and (allegedly) "pure vicarious liability."[4] Rule 14.1(g)(i) provides in part:

> 1. A petition for a writ of certiorari shall contain, in the order indicated:
>
> * * *
>
> (g) A concise statement of the case setting out the facts material to consideration of the questions presented, and also containing the following:
>
> * * *
>
> (i) If review of a state-court

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4. *What* that argument might turn out to be were certiorari to be granted is not especially clarified by the rest of Winston & Strawn's Petition. Winston & Strawn cites to no case holding there are *special* due process requirements in such a case; it offers not even the outline of a principled argument, let alone a constitutionally based one.

> judgment is sought, specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears (*e.g.*, court opinion, ruling on exception, portion of court's charge and exception thereto, assignment of error), so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgement on a writ of certiorari. . . .

The mandate of this Rule is quite clear. Winston & Strawn ignores it. Winston & Strawn merely refers to, and its appendix only contains, a post-judgment opinion of the trial court, the Arizona Court of Appeals' published decision, and the Arizona Supreme Court's Order denying review. None of these documents reflect a claim by Winston & Strawn that *respondeat* liability for punitive damages requires some special non-*Haslip* federal due process analysis.[5] Its due process arguments were

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5. In *Haslip*, *supra* at 499 U.S., 12-15 and 23 n. 11, this Court rejected due process attacks on "pure" *respondeat* liability for punitive damages and, moreover, specifically addressed and rejected the contention that due process, in such context, requires proof by clear and convincing evidence. Winston & Strawn argues that *Haslip* was not a "pure" derivative liability case because (Cont'd)

limited to Arizona procedural matters in light of this Court's opinion in *Haslip, supra*. Its arguments about *respondeat* liability and punitive damages were limited to state law issues. *Cp*. 907 P.2d, at 514-17; App. at 11a-17a (discussing only *state* law issues regarding interplay between *respondeat* liability and punitive damages) *with* 907 P.2d, at 519-21; App. at 23a-27a (*not* discussing *respondeat* issues in discussing Winston & Strawn's due process contentions) *and* 907 P.2d, at 521-22; App. at 27a-28a (discussing only *state* law remittitur issues raised by Winston & Strawn and not addressing any potential *respondeat* or due process issues in connection therewith). In fact, it appears that Winston & Strawn has simply taken a hint from Judge Noyes' dissent in the Arizona Court of Appeals — he suggests (among a number of other things) that there is *some* sort of special due process concern in "pure derivative liability" cases. But Judge Noyes was in effect just offering some general suggestions to *future* punitive damage defendants for their elaboration. His *respondeat*/due process suggestion is as notable for its lack of elaboration as for its passion. Winston & Strawn's Petition is similar, but does not suggest that any meaningful "elaboration" would be forthcoming were certiorari granted.

Certainly, the failure of Winston & Strawn's experienced counsel to make even a minimal gesture in satisfaction of the plain requirements of Rule 14.1(g)(i) confirms Winston & Strawn's "waiver." As this Court explained in *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 550, 107 S. Ct. 1940, 95 L. Ed. 2d 474 (1987):

(Cont'd)
there was some evidence that Pacific Mutual's Birmingham office had received some hint of an ongoing pattern of fraud. *Haslip, supra* at 499 U.S., 14. But this Court's analysis does not appear to have relied on this fact; this Court's analysis in *Haslip* addressed the straightforward Alabama *respondeat* doctrine which does not require any such "hint." *Id.*

> It is well settled that this Court will not review a final judgment of a state court unless "the record as a whole shows either expressly or by clear implication that the federal claim was adequately presented in the state system." Webb v. Webb, 451 US 493, 496-497, 68 L Ed. 2d 392, 101 S Ct 1889 (1981). Appellants did not present the issues squarely to the state courts until they filed their petition for rehearing with the Court of Appeal. The court denied the petition without opinion. When " ' "the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." ' " Exxon Corp. v Eagerton, 462 US 176, 181, n 3, 76 L Ed 2nd 497, 103 S Ct 2296 (1983) (quoting Fuller v Oregon, 417 US 40, 50, n 11, 40 L. Ed. 2nd 642, 94 S. Ct. 2116 (1974) (quoting Street v New York, 394 US 576, 582, 22 L. Ed. 2d 572, 89 S Ct 1354 (1969))). Appellants have made no such showing in this case.

(Footnote omitted).

Accordingly, it appears that the only federal question which could be presented to this Court consistently with Winston & Strawn's statement of the question presented and its arguments below is whether a 2 or 3:1 ratio is *ipso facto* precluded by due process — a federal question which affords no relief to Winston & Strawn. (This Court's prior decisions make it plain that a 2 or 3:1 ratio meets due process standards — *see infra* at (6).)

III.

WINSTON & STRAWN' STATEMENT OF THE CASE CONFLICTS DRAMATICALLY WITH THE FACTS AS STATED IN THE DECISION OF THE ARIZONA COURT OF APPEALS.

A cursory comparison of the Court of Appeals' decision with Winston & Strawn's Petition suggests that there are two entirely different cases before this Court. This is particularly true of the alleged facts stated in Winston & Strawn's Petition. Winston & Strawn's "facts" are simply diametrically opposed to the facts found by the jury as recounted by the Court of Appeals' decision (and found by it to be based on substantial evidence). Winston & Strawn makes no attempt to show that the facts found by the jury (as stated in the Court of Appeals' decision) in fact lack substantial evidence in the record. Accordingly, Winston & Strawn's "story" is *not accurate*, and dramatically so. *Haber, supra; Basham, supra.* Rule 14.4 requires a petitioner to be accurate and its failure to do so is stated to be sufficient reason for the Court to deny a Petition. Massive inaccuracy of the sort presented by Winston & Strawn's Petition calls for just such denial.

IV.

THIS IS NOT A CASE OF "PURE DERIVATIVE LIABILITY."

As noted above, Winston & Strawn attempts to characterize this case as though it involved an "innocent employer"/menial employee situation, "pure" *respondeat* or derivative liability.[6]

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6. As noted above, n. 5, Winston & Strawn presents a *flawed* argument that *Haslip* was *not* a "pure" *respondeat* case. It was.

While it is true that Arizona law permits imposition of punitive damage liability in such a situation, Winston & Strawn at best over-simplifies. As explained above, the Court of Appeals held in the alternative that imposition of punitive damages (presumably including the amount thereof) was justified on *three* additional grounds: (a) general partnership law (where the conduct of a partner is the conduct of the partnership and so this is legally not a true case of "derivative" liability in the first instance); (b) under the *Restatement (Second) of Torts* (because Greenfield was a managerial agent with respect to the conduct in question); and (c) under Arizona's version of the Uniform Partnership Act § 13, A.R.S. § 29-213.

Obviously, each of these four bases for imposing punitive liability, and in what amount, raise distinct jurisprudential issues (although whether they raise any *federal* questions is very doubtful). This complicates the Court's task were certiorari to be granted. In addition, to the best of HRP's knowledge, neither the highest court of any state nor any federal court of appeals has addressed any due process implications in a case involving these distinct and varying bases. Certainly, HRP is aware of no such court having ruled favorably for a defendant with respect to such an argument on federal due process grounds. Accordingly, the issue presented (if it is properly presented) is not one appropriate for this Court's review. This is not just an issue that deserves *further* "percolation" in the lower courts: it has simply had no percolation to speak of. Rule 10(a) and (b); *Yee, supra* at 503 U.S. 538.

V.

THIS COURT "RARELY" GRANTS CERTIORARI IN CASES OF THIS TYPE.

Rule 10 (Considerations Governing Review on Certiorari) states those considerations upon which the Court looks favorably in granting certiorari. By its silence, Winston & Strawn concedes that none are applicable here.[7] Rule 10 also states "a petition for a writ of certiorari is rarely granted where the asserted error consists of . . . the misapplication of a properly stated rule of law." That is the asserted error here. Winston & Strawn points to no error in any statement of law by either the trial court or the Court of Appeals but merely claims that these courts "flubbed it," Petition at 21, contending that these courts misapplied the correct rules of law.

VI.

THE OUTCOME OF THIS CASE IS PREDETERMINED BY THIS COURT'S PRECEDENT.

This case raised some interesting questions of Arizona state law, including some of first impression. It raised no interesting questions of federal constitutional law, let alone any that were properly preserved. Both the trial court and the Arizona Court of Appeals carefully analyzed the due process arguments presented by Winston & Strawn and properly found that due process had been accorded. There is no contention by Winston & Strawn that the Arizona Courts incorrectly stated the due process rules as

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7. It is nonetheless worth noting that Rule 10(c) is inapplicable because, since Winston & Strawn did not raise with the Arizona courts the question it now presents to this Court, the Arizona courts did not pass on it. Certainly, the opinion of the Arizona Court of Appeals will not "stand in the way" of a future Arizona litigant concerned with this issue.

enunciated by this Court in its relevant recent cases from *Haslip* through *TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. __, 113 S. Ct. 2711, 125 L. Ed. 2d 366 (1993), and *Honda Motor Co. v. Oberg*, __ U.S. __, 114 S. Ct. 2331, 129 L. Ed. 2d 336 (1994), all of which were extensively reviewed by the Arizona Court of Appeals. 907 P.2d, at 519-21; App. at 23a-27a. This Court has not identified any *special* due process concern with the imposition of punitive damages on even a "pure" *respondeat* basis, let alone the three additional bases supporting such liability here. Moreover, this Court declined in *Haslip* to require a clear and convincing evidence standard of proof in a *respondeat* context; in contrast, Arizona requires that standard of proof across the board on state public policy grounds. In addition, the ratio of punitive to compensatory damages here is only 2 or 3:1. *TXO, supra,* in conjunction with the factual factors analyzed by the Arizona Court of Appeals, refutes any doubt as to the propriety of the amount of the award. Winston & Strawn has given this Court no reason to revisit its recent relevant and dispositive precedent.

CONCLUSION

For the foregoing reasons, HRP respectfully requests this Court to deny Winston and Strawn's Petition for a Writ of Certiorari.

Respectfully submitted,

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